

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

JUNE 2, 1997

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re TOG Machining Company, Inc.

Serial No. 74/545,057

Frank H. Gaspardi for applicant.¹

Theresa K. Kaiser, Trademark Examining Attorney, Law Office 104
(Sidney I. Moskowitz, Managing Attorney).

Before Cissel, Quinn and Hohein, Administrative Trademark Judges.
Opinion by Hohein, Administrative Trademark Judge:

An application has been filed by TOG Machining Company, Inc. to register as a trademark the mark consisting of the letter "T" enclosed within a circle, as shown below,

¹ Mr. Gaspardi is applicant's president and has represented applicant throughout the prosecution of its application.

for "metal fasteners and fittings such as studs, nuts, bolts, pins, tubes, elbows and sleeves".²

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its goods, so resembles the mark "T," which is registered in typed form for "fastening devices such as locking members for screws, nuts, and bolts; sheet metal nuts for screws and bolts; hose, wire tube and cable clamps; locking clips; [and] nuts and molded plastic nuts and locking members,"³ as to be likely to cause confusion, mistake or deception.⁴

Applicant has appealed. Briefs have been filed,⁵ but an oral hearing was not requested. We affirm the refusal to register.

² Ser. No. 74/545,057, filed on July 11, 1994, which alleges dates of first use of June 1, 1982.

³ Reg. No. 927,128, issued on January 18, 1972, which sets forth dates of first use of September 1941; renewed.

⁴ Although registration was also finally refused on the same statutory basis in light of a later-issued registration, owned by a different registrant, for a mark consisting of the letter "T" enclosed within an inverted or reversed letter "D" for "metal fasteners; namely, threaded fasteners, rivets, pins, bolts and screws," such refusal has been withdrawn in light of applicant's submission, inter alia, of a copy of a letter of consent from the owner of the registration to registration of applicant's mark.

⁵ Applicant, with its brief, submitted a copy of pages from a 1985 fasteners catalog, issued by the cited registrant, as support for its contention that its goods are specifically different from those of the cited registrant. The Examining Attorney, in her brief, has objected "to the applicant's inclusion of this new evidence with its appeal brief," correctly noting that the submission thereof is

Turning first to consideration of the respective marks, we agree with the Examining Attorney that applicant's mark, consisting of a capital letter "T" enclosed within a circle, "is highly similar in appearance, sound, connotation and commercial impression" to registrant's mark, which consists simply of a capital letter "T". Applicant, we note, does not contend to the contrary.⁶ Plainly, the mere addition of a circle around registrant's mark, as applicant has done, with nothing more, is an insignificant difference, since the circular region created thereby serves only as a vehicle or background for the display of the source-indicative term, namely, a capital letter "T". Contemporaneous use of the respective marks in connection with the same or closely related fastener products would clearly be likely to cause confusion as to source or sponsorship.

Turning, therefore, to consideration of the respective goods, applicant argues that confusion is not likely because such goods are specifically different and registrant "services an entirely different market segment" than does applicant. In

untimely under Trademark Rule 2.142(d). In view thereof, we sustain the Examining Attorney's request that "this evidence not be considered." We hasten to add, however, that even if we were to consider the catalog pages furnished by applicant with its brief, such evidence would not affect the outcome of this appeal.

⁶ Applicant, instead, asserts that because the registration for the mark "T" was not a bar to the subsequent issuance of the registration for the mark consisting of the letter "T" and an inverted or reversed letter "D," the cited registration for the mark "T" should likewise not be a bar to registration of applicant's letter "T" within a circle mark. However, as the Examining Attorney points out, the mark consisting of the letter "T with a backwards [letter] D around it contains a more significant design element than do either applicant's [letter] T with a single line circle [mark] or the cited registrant's typed letter T" mark.

particular, applicant maintains that its goods are marketed to the nuclear submarine and power generation fields, while registrant's goods are directed to the automotive and truck industries.

It is well settled, however, that goods need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. Instead, it is sufficient that the goods are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same producer or provider. See, e.g., *Monsanto Co. v. Enviro-Chem Corp.*, 199 USPQ 590, 595-96 (TTAB 1978) and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978). Moreover, it is also well established that the issue of likelihood of confusion must be determined in light of the goods set forth in the involved application and cited registration and, in the absence of any specific limitations therein, on the basis of all normal and usual channels of trade and methods of distribution for such goods. See, e.g., *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); and *Paula Payne Products Co. v. Johnson Publishing Co., Inc.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973).

Here, as noted by the Examining Attorney, neither the identification of goods in the application nor those listed in the cited registration are limited to any particular fields or industries. The respective goods, rather, are broadly identified and, thus, it must be presumed that they encompass all goods of the nature and type described; that they move in all normal channels of trade and distribution which would be normal for such goods; and that they would be available for purchase by all potential customers. See *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). In light thereof, it is clear that applicant's "metal fasteners and fittings such as studs, nuts, bolts, pins, tubes, elbows and sleeves" are identical in part and are otherwise closely related to registrant's "fastening devices such as locking members for screws, nuts, and bolts; sheet metal nuts for screws and bolts; hose, wire tube and cable clamps; locking clips; [and] nuts and molded plastic nuts and locking members". In particular, both the application and the cited registration list "nuts" without any significant restrictions as to their uses; registrant's "locking members for ... nuts" and applicant's "nuts" are complementary goods since they would be used together; and the remaining goods set forth in the application and cited registration, while different in the specific uses for which they are designed, are nevertheless functionally related in that they all constitute types of fasteners and fittings for industrial and

commercial use. All of these products would be sold through the same channels of trade to identical classes of purchasers.⁷

Applicant maintains, however, that "[i]n thirteen years of simultaneous use there has been no confusion" between its mark and registrant's mark. The asserted absence of any incidents of actual confusion, which as set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), is one of the factors which must be considered, when of record, in a likelihood of confusion analysis, is not a meaningful factor in this case. This is because the alleged lack of any instances of actual confusion would seem to be explained by the very fact that, as noted earlier, applicant claims to sell its metal fasteners and fittings solely to the nuclear submarine and power generation fields while registrant's fastening devices are marketed exclusively to the automotive and truck industries. "Unfortunately," as the Examining Attorney points out in her brief, "neither applicant's nor registrant's identification of goods is so limited" and, as indicated earlier in this opinion, the issue of likelihood of confusion must be based on the manner in which the goods are respectively identified in the involved application and cited registration. See *Canadian Imperial Bank*

⁷ While, of course, such purchasers may undoubtedly be careful and discriminating with respect to the fasteners and fittings which they buy, such does not necessarily mean that they are also sophisticated or otherwise knowledgeable in the field of trademarks or immune from confusion as to origin or affiliation. See, e.g., *Wincharger Corp. v. Rinco, Inc.*, 297 F.2d 261, 132 USPQ 289, 292 (CCPA 1962); *In re Decombe*, 9 USPQ2d 1812, 1814-15 (TTAB 1988); and *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983). This would be especially the case where, as here, substantially identical marks are utilized by applicant and registrant.

of Commerce, N.A. v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1816 (Fed. Cir. 1987) [likelihood of confusion is determined on basis of identifications forth in application and registration and "nothing in *du Pont* ... is inconsistent with it"].

We conclude, therefore, that purchasers familiar with registrant's capital letter "T" mark for "fastening devices such as locking members for screws, nuts, and bolts; sheet metal nuts for screws and bolts; hose, wire tube and cable clamps; locking clips; [and] nuts and molded plastic nuts and locking members" would be likely to believe, upon encountering applicant's substantially similar capital letter "T" enclosed within a circle mark for "metal fasteners and fittings such as studs, nuts, bolts, pins, tubes, elbows and sleeves," that such identical, complementary or otherwise functionally related fasteners and fittings emanate from or are affiliated with the same source.

Decision: The refusal under Section 2(d) is affirmed.

R. F. Cissel

T. J. Quinn

G. D. Hohein
Administrative Trademark Judges,
Trademark Trial and Appeal Board